

Exhibit A



Via FedEx and Email

January 16, 2018

Ms. Breanne Hee, Director of Corporate Services
Sandwich Isles Communications, Inc.
77-808 Kamehameha Hwy.
Mililani, HI 96789

Re: Demand for Repayment of Improperly Disbursed Federal Universal Service High Cost Program Support

Dear Ms. Hee:

On December 5, 2016, the Federal Communications Commission (Commission) issued the *SIC Improper Payments Order*, which directed USAC to take action to determine the amount of inflated management fees paid by SIC to its parent company, Waimana Enterprises, Inc. (Waimana) from 2002 through 2015, and to recover the resultant excess support received by SIC.¹ After review, USAC has determined that SIC improperly requested and received reimbursement from the federal Universal Service High-Cost Support Mechanism (High Cost) for excessive management fees paid to Waimana from 2002 through 2015 in the amount of \$6,770,938.00. Accordingly, this demand letter is for recovery of \$6,770,938.00.²

Results Summary

In Paragraph 2 of the *SIC Improper Payments Order* the Commission found that the management fees SIC paid to Waimana were excessive and disallowed all annual management fees in excess of \$1,237,355 per year (the Cap) that SIC paid to Waimana from 2002 through 2015.³ The Commission directed USAC to calculate and recover the High Cost funds SIC received for annual

¹ *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12999, at 13000, para. 2 & n.3 (2016) (“*SIC Improper Payments Order*”).

² We note that this amount is separate from, and in addition to, the demand letter USAC issue to SIC on Dec. 29, 2016 for \$27,270,390 related to overpayments from the High Cost program for the time period 2002 through 2015. Letter from Charles Salvator, Vice President and Chief Financial Officer, USAC, to Breanne Hee, Director of Corporate Services, SIC (Dec. 29, 2016). *See also* SIC Petition for Reconsideration, WC Docket No. 10-90 (filed Jan. 4, 2017)(requesting that the Commission reduce the amount of this finding).

³ *SIC Improper Payments Order* at para. 2, note 3 (the Cap “is the average amount of the comparable entities’ average management fees for 2012, 2013, and 2014”).

management fees in excess of the Cap during that period.⁴

On December 29, 2016, and again on February 22, 2017, USAC requested SIC provide 2002-2011 management fee documentation and identify the total amount of management fees SIC expensed in the applicable year.⁵ SIC submitted the requested documentation on March 23, 2017. USAC examined the documentation, and conducted multiple follow-up inquiries with SIC. USAC removed the excess management fee amounts from the applicable general ledger accounts by the same prorated percentage by which SIC recorded its management fees in those general ledger accounts. USAC then calculated that, as a result of the excessive management fees, SIC received a total of \$6,770,938.00 in overpayment of support.

This \$6,770,938.00 overpayment is a debt owed to the United States (the “Debt”) pursuant to Section 3701, *et seq.* of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701, *et seq.*). The Debt is immediately due and payable as of the date of this letter (the “Due Date”) without further demand. If not paid on or before thirty (30) days from the date of this letter (the “Date of Delinquency”) the Debt will begin accruing interest at the rate of 7.25 percent per annum, inclusive of administrative charges, until paid in full. In addition, a penalty of six percent (6%) per annum will begin accruing on the Date of Delinquency on any portion of the Debt that remains unpaid ninety (90) days after the Due Date. The Commission will waive all accrued interest and administrative charges if the Debt is paid in full within thirty (30) days of the Due Date.

In addition, if the Debt is not paid in full within thirty (30) days of the Due Date, the Commission will instruct USAC to recoup and/or set off any monies owed to SIC, including current and future High Cost program payments, against the Debt, until the Debt and all accrued interest, penalties and costs associated with the Debt are paid in full.

Payment of the Debt should be made as follows:

Payment sent by U.S. Postal Service and Standard Mail:

USAC
PO Box 105056
Atlanta, GA 30348-5056

Payment sent by Courier or Overnight Delivery:

USAC

⁴ *Id.* at paras. 2, 149. The *SIC Improper Payments Order* also directed USAC to undertake a separate investigation of SIC’s affiliate transactions for costs incurred in calendar year 2016 to ensure that SIC accurately reports its costs going forward. USAC is currently conducting that affiliate transactions investigation and this demand letter does not include any amounts that may be determined as owed by SIC as a result of that review.

⁵ Although the investigation period included 2002–2015, USAC did not include management fee documentation for 2012–2013 (for 2014–2015 disbursements) in the December 2016 and February 2017 requests as this information was previously requested and received during USAC’s investigation of SIC and included in the recalculation of support for the 2002–2015 investigation period.

Ms. Breanne Hee
Sandwich Isles Communications, Inc.
Page 3

Lockbox 105056
1075 Loop Road
Atlanta, GA 30337
(404) 209-6377

Payment by Wire Transfer:

ACH payment must be sent in CCD+ format to
ABA Routing #071000039,
Account#5590045653

The Commission may instruct USAC to refer the Debt to the United States Treasury or to the Department of Justice for further collection action, including litigation. After referral and until paid in full, the Debt will continue to accrue interest, penalties and administrative charges as described above, in addition to the administrative collection charges and costs of litigation that the United States Treasury and/or the Department of Justice may impose. The United States Treasury may also offset the Debt against funds owed by the United States to SIC.

SIC may request a written agreement to repay the Debt, but only if it makes the request within fifteen (15) days of the date of this letter. An explanation of the process by which a company may request a repayment agreement can be found at <http://usac.org/cont/making-payments/payment-plans.aspx>. All payment plan requests are subject to Commission approval. SIC has fifteen (15) days from the date of this letter to request an opportunity to review and copy USAC's records related to the mechanism USAC used to calculate the Debt.

If SIC wishes to appeal this demand letter, it must do so within sixty (60) days of the date of this letter. Further information regarding your right to appeal this decision and the process for filing an appeal can be found at 47 C.F.R. §54.719, *et seq.* and at the USAC Website, <http://usac.org/about/about/program-integrity/appeals.aspx>.

The Commission and USAC continue to examine this matter and reserve the right to review additional records, to verify the Debt amount as well as the accuracy and integrity of other High Cost support payments to SIC and to take appropriate action to protect the interests of the United States.

Sincerely,



//s// Charles Salvator
Vice President and Chief Financial Officer

Ms. Breanne Hee
Sandwich Isles Communications, Inc.
Page 4

cc: Ms. Abby Tawarahara, Controller, SIC (*via electronic mail*)

Adm. James Arden Barnett, Jr., Counsel to SIC, Venable LLP (*via electronic mail*)

Kris A. Monteith, Chief, Wireline Competition Bureau, Federal Communications
Commission (*via electronic mail*)

Thomas M. Johnson Jr., General Counsel, Federal Communications Commission (*via
electronic mail*)

Michele Ellison, Deputy General Counsel, Federal Communications Commission (*via
electronic mail*)

Mark Stephens, Managing Director, Federal Communications Commission (*via electronic
mail*)

Ernesto Beckford, Acting General Counsel, USAC (*via electronic mail*)

Radha Sekar, Chief Executive Officer, USAC (*via electronic mail*)



Via Electronic Mail

March 2, 2018

James Arden Barnett, Jr., Esq.
Venable LLP
600 Massachusetts Avenue, NW
Washington DC 20001

Re: Sandwich Isles January 18, 2018 Response to USAC Demand Letter

Dear Admiral Barnett:

On January 16, 2018, the Universal Service Administrative Company (USAC) sent Sandwich Isles Communications, Inc. (SIC) a letter seeking recovery from the Universal Service Fund (USF) of \$6,770,938 in support resulting from excessive management fees paid by SIC to its parent company, Waimana Enterprises, Inc. (Waimana) for program years 2002 through 2015 (Demand Letter).¹

On January 18, 2018, as counsel for SIC, you responded to the Demand Letter challenging its legal basis and the authority for imposing interest on the demand amount.² You also stated that SIC cannot provide a meaningful response to the Demand Letter because SIC has no idea of the specifics of the underlying computation. You close by asserting that SIC will not address the merits of the Demand Letter without additional documentation explaining how the demand was computed and how the Cap (as defined below) was computed.

Below, we address each of these assertions and your requests for information:

(1) Legal Basis for the Demand for Payment and the Cap

As you are aware, USAC is the administrator of the USF and of the Federal Communications Commission's (FCC or Commission) universal service programs, including the High Cost program.³ As was explained in the Demand Letter, in the *Sandwich Isles Improper Payments Order*, the FCC directed USAC to take action to determine the amount of inflated management fees paid by SIC from 2002 through 2015 to its parent company, Waimana Enterprises, Inc.

¹ Letter from Charles Salvator, Vice President & Chief Financial Officer, USAC, to Breanne Hee, Director of Corporate Services, SIC (Jan. 16, 2018).

² Letter from James Arden Barnett, Jr., Esq., Counsel for SIC, to Charles Salvator, Vice President & Chief Financial Officer, USAC (January 18, 2018) (SIC Letter).

³ 47 C.F.R. §54.701.

(Waimana), and to recover the resultant excess USF support received by SIC.⁴ The Commission specifically directed USAC to disallow management fees in excess of \$1,237,355 (the Cap), which the Commission found to be the average amount of management fees for comparable entities for 2012, 2013, and 2014, and to apply that approach for each year, from 2002 to 2015.⁵

(2) Authority for Imposing Interest on the Demand Amount.

The Debt Collection Improvement Act of 1996 and the FCC's implementing regulations require the imposition of interest and administrative costs on the \$6,770,938.00 debt, from January 16, 2018 (the Date of Delinquency, as defined in the Demand Letter) until payment in full, and waiver of accrued interest and costs if the debt is paid in full within thirty (30) days of the Date of Delinquency.⁶ Because SIC did not pay the debt within thirty (30) days of January 16, 2018, the \$6,770,938.00 began accruing interest at the annual rate of 7.25 percent and administrative costs on January 16, 2018.⁷ Further, as set forth in the Demand Letter⁸ and as required by the aforementioned debt collection authorities, if the debt is not paid in full within ninety (90) days of January 16, 2018, the debt will begin accruing an additional six percent (6%) per annum from January 16, 2018 until paid in full.⁹

(3) Information on Calculation of the Demand Amount.

As explained in the Demand Letter, to calculate the amount of recovery, USAC compared SIC's management fees to the Cap in each data year from 2002 to 2015, and proportionately removed the management fee amounts that exceeded the Cap from the applicable SIC general ledger accounts by the same prorated percentage by which SIC recorded its management fees in its general ledger.¹⁰

SIC has been directly involved in the determination and calculation of the demand amount and provided the data that USAC used to calculate the amount. On December 29, 2016, and again on February 22, 2017, USAC requested relevant management fee documentation from SIC and asked SIC to identify the total amount of management fees that were expensed in the applicable

⁴ Demand Letter, at 1; *see also* *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12999, at 13000, para. 2 & n.3 (2016) ("*SIC Improper Payments Order*") (citing Memorandum from USAC to FCC WCB, Investigation of Sandwich Isles Communications, Inc., at 78 (May 13, 2016)).

⁵ *SIC Improper Payments Order*, 31 FCC Rcd at 13000, 13031, para. 106 n.3. *See also* Memorandum from Universal Service Administrative Company to FCC Wireline Competition Bureau, Investigation of Sandwich Isles Communications, Inc., WC Docket Nos. 10-90, 16-405, CC Docket No. 96-45 at 78 (dated May 13, 2016, filed Mar. 13, 2017) (USAC Final Report).

⁶ Pub. Law 104-134, 110 Stat. 1321, 1358 (1996).

⁷ *See* 31 U.S.C. § 3717; 47 C.F.R. § 1.1940; *see also* 31 C.F.R. § 901.9.

⁸ Demand Letter at 2.

⁹ *See* 31 U.S.C. § 3717; 31 C.F.R. § 901.9; 47 C.F.R. § 1.1940.

¹⁰ Demand Letter at 2.

years.¹¹ On March 23, 2017, SIC submitted management fee data in the form of vendor files and management fee worksheets.¹² USAC reviewed the information provided by SIC to ensure that the amounts provided in the cost studies (on an account basis) were consistent with the management fee data in the general ledger and financial statements. On April 20, 2017, based on its review of the data provided by SIC, USAC informed SIC that its management fee data submission was incomplete, and USAC identified missing documentation and discrepancies in the management fee data.¹³ Correspondence between USAC and SIC specifically addressed the process by which USAC would be revising the management fees.¹⁴ SIC also participated in teleconferences with USAC on April 28, 2017, and May 16, 2017 to further discuss the management fee calculations, discrepancies, and missing documentation, which SIC subsequently addressed.¹⁵ Based on its review of the data provided by SIC, including the additional and revised documentation that SIC submitted in response to USAC's requests, USAC has calculated the total impact of the improper management fees to be a \$6,770,938 overpayment of support.

(4) USAC's Computation and Application of the Cap on SIC's Management Fees.

Attachment 1 to this letter provides USAC's computation and application of the Cap on SIC's management fees. Table 1 of Attachment 1 illustrates the SIC management fee disallowances based on the application of the Cap, and Table 2 of Attachment 1 illustrates the monetary effect of the disallowance of these SIC management fees relative to support amounts paid to SIC during the applicable program periods.¹⁶

To calculate the total amount of management fees disallowed for each year, Table 1 illustrates the reduction due to the Cap on SIC's total management fees reported for the data years 2002 to 2015.¹⁷

¹¹ Letter from Charles Salvator, Vice President & Chief Financial Officer, USAC, to Breanne Hee, Controller, SIC (Dec. 29, 2016); Letter from Charles Salvator, Vice President & Chief Financial Officer, USAC, to Breanne Hee, Controller, SIC (Feb. 22, 2017).

¹² Email from James Arden Barnett, Jr., Esq., Counsel for SIC, to Vickie S. Robinson, Vice President & General Counsel, USAC (Mar. 23, 2017) (attaching vendor files and management fee worksheets).

¹³ Email from Deborah Eltgroth, Associate General Counsel, USAC, to James Arden Barnett, Jr., Esq., Counsel for SIC (April 20, 2017).

¹⁴ Email from James Arden Barnett, Jr., Esq., Counsel for SIC, to Deborah Eltgroth, Associate General Counsel, USAC (April 24, 2017) (communicating SIC's position that the Cap should only be applied to data years 2012 to 2014); Email from Vickie S. Robinson, Vice President & General Counsel, USAC to James Arden Barnett, Jr., Esq., Counsel for SIC (Apr. 25, 2017) ("Contrary to the position that you have outlined below, our position is that the management fees documentation request is expressly within the scope of the FCC's Sandwich Isles Improper Payments Order. The Order specifically directs USAC to apply its calculation for excessive management fees for each year from 2002-2015.").

¹⁵ Email from James Arden Barnett, Jr., Esq., Counsel for SIC, to Deborah Eltgroth, Associate General Counsel, USAC (May 17, 2017) (addressing discrepancies between management fee records and corresponding financial statements and providing revisions to footnotes to audited financial statements).

¹⁶ See *SIC Improper Payments Order*, 31 FCC Rcd at 13000, para. 2.

¹⁷ See Management Fee Calculations, Attachment 1, at 1.

Neither Table 1 nor the demand amount reflect reductions for data years 2013, 2014, or 2015. In addition to disallowing management fees above the Cap, the *SIC Improper Payments Order* directed USAC to recalculate High Cost support based on revised cost studies, including costs incurred in data years 2013 and 2014.¹⁸ USAC did not make reductions for 2013 or 2014, because the calculations of High Cost support performed pursuant to the *SIC Improper Payments Order* encompass the impact of reductions to management fees for data years 2013 and 2014. For 2015, Table 1 does not reflect reductions, because SIC's management fees for 2015 did not exceed the Cap, and therefore there were no disallowances for 2015.

Table 2 summarizes the monetary effect of the removal of SIC management fees -- that is, the reduction in support amounts that resulted from the removal of SIC management fees from the support basis.¹⁹ Based on the management fee reductions, USAC recalculated High Cost Loop (HCL) support, Local Switching Support (LSS), and, in coordination with the National Exchange Carrier Association (NECA), Interstate Common Line Support (ICLS) based on the applicable rules.²⁰

Tables 3–15 of Attachment 1 provide details at the general ledger account level of the management fee disallowances.²¹

With the exception of the 2009 disbursements data, for which USAC used estimates for two months of 2007 data, SIC provided all of the documentation relied upon for the recalculations summarized in each of these tables.

(5) SIC's Due Date, Date of Delinquency and Time to Appeal

We take this opportunity to reiterate that the Due Date and Date of Delinquency (each defined as January 16, 2018 in the Demand Letter) remain as set forth therein. As your January 18 letter acknowledges, SIC has not appealed the Demand Letter on the merits.²² If SIC wishes

¹⁸ *SIC Improper Payments Order*, 31 FCC Rcd at 13000, para. 2. ("We direct Sandwich Isles to resubmit its cost studies and high-cost forms for costs incurred in 2013, 2014, and 2015, within 60 days after the date of this Order so that USAC can determine the proper amount of high-cost support that should have been disbursed to Sandwich Isles in 2015 and 2016 and the amounts that should be disbursed in 2017 consistent with our findings in this Order. This includes taking all necessary steps to modify its cost studies so that the identified violations do not result in overpayments in future periods.").

¹⁹ See Management Fee Calculations, Attachment I, at 2.

²⁰ See 47 C.F.R. § 36.631 (2012) (HCL); 47 C.F.R. § 54.301 (2012) (LSS); 47 C.F.R. § 54.901 (2012) (ICLS).

²¹ See Management Fee Calculations, Attachment I at 2-13; *supra* note 17.

²² See SIC Letter, at 2 ("[T]his letter is not to be considered a response to the merits of the January 16 demand letter . . ."). See also 47 C.F.R. § 54.721 (listing requirements for filing an appeal of a USAC action). SIC also asserts that "the Demand Letter is not an Order and certainly is not final subject to 'appeal'. It is, rather, subject to independent review by the FCC in the manner provided in the Commission's rules." SIC Letter, at 1 (citing 47 CFR 54.722)). However, appeal to the FCC is permitted only after seeking review by USAC. See 47 C.F.R. § 54.719 (a) ("Any party aggrieved by an action taken by the Administrator, as defined in § 54.701, §54.703, or § 54.705, must first seek review from the Administrator.").

James Arden Barnett, Jr., Esq.
March 2, 2018
Page 5 of 5

to appeal the Demand Letter, it must do so within sixty (60) days of the date of that letter, by March 19, 2018. As explained in the Demand Letter, further information regarding SIC's right to appeal and the process for filing an appeal can be found at 47 C.F.R. §54.719, *et seq.* and at the USAC Website, <http://usac.org/about/about/program-integrity/appeals.aspx>.

Sincerely,



Charles Salvator
Vice President and Chief Financial Officer

cc (via electronic mail):

Kris A. Monteith, Chief, Wireline Competition Bureau, FCC
Thomas M. Johnson, Jr., General Counsel, FCC
Michele Ellison, Deputy General Counsel, FCC
Mark Stephens, Managing Director, FCC
Radha Sekar, Chief Executive Officer, USAC
Ernesto Beckford, Deputy General Counsel, USAC
Deborah R. Eltgroth, Associate General Counsel, USAC
Ian Volner, Esq., Venable LLP

ATTACHMENTS:

1. Management Fee Calculations
2. Letter from Charles Salvator, Vice President & Chief Financial Officer, USAC, to Breanne Hee, Controller, SIC (Dec. 29, 2016)
3. Letter from Charles Salvator, Vice President & Chief Financial Officer, USAC, to Breanne Hee, Controller, SIC (Feb. 22, 2017)
4. Email from James Arden Barnett, Jr., Esq., Counsel for SIC, to Vickie S. Robinson, Vice President & General Counsel, USAC (Mar. 23, 2017)
5. Email from Deborah Eltgroth, Associate General Counsel, USAC, to James Arden Barnett, Jr., Esq., Counsel for SIC (April 20, 2017)
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